

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.393 of 2016

Date of Decision: May 19, 2016

Menfooj

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. A.S. Trikha, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

FATEH DEEP SINGH, J.

The petitioner-Menfooj has preferred this criminal writ petition under Article 226 of Constitution of India on the grounds that he was convicted and sentenced to life imprisonment in case bearing FIR No.878 dated 30.12.2011 under Section 395 IPC read with Section 25 of the Arms Act, Police Station Incholi, District Meerut and was presently lodged in District Jail, Karnal. It is alleged that office of Superintendent of District Jail, Karnal declined to accept his application for regular parole after completion of his sentence from the date of conviction and that his wife has sent representation Annexure P/1 on the grounds that the children of the petitioner were to be admitted in school for which the presence of the father was compulsory and that the petitioner is to facilitate payment of fee, purchase of books etc. and placed reliance on the *Panchayatnama* to this effect Annexure P/2. It is on the basis of this emergency parole the petitioner has invoked the jurisdiction of this Court.

The State in its reply has taken up the plea that since the petitioner has been convicted for a heinous offence under Section 395 IPC read with Section 25 of the Arms Act in another case bearing FIR No. 31 dated 26.1.2012 Police Station, Sadar, Panipat vide judgment dated 24.01.2014 and in another case got registered for the same very offence by way of FIR No.43 dated 23.01.2012 pertaining to Police Station, Model Town, Panipat the petitioner has been convicted and further for the same very offence has now been convicted and undergoing sentence vide judgment dated 18.11.2014 and that his case falls under the term “hardcore prisoner” as defined under Clause (aa) of the Haryana Good Conduct Prisoners (Temporary Release) Amendment Act, 2013 (in short, 'the Act'). By virtue of Section 5A of the Act which deals with provisions for “hardcore prisoner” that nothing contained in Section 3,4 of the Act shall entitle for temporary release and it is after completion of 5 years in case the convicted hardcore prisoner is not awarded death penalty and that the trial period is not to be included within the imprisonment period alleging that the petitioner has completed only 03 years, 07 months and 01 day of the imprisonment in case FIR No. 31 dated 26.1.2012 Police Station Sadar, Panipat and, therefore, was not entitled to temporary release/furlough.

Appreciating the contentions of learned counsel for the parties, admittedly and irrefutably the petitioner has been convicted for heinous offence under Section 395 IPC read with Section 25 of Arms Act in 03 different criminal cases registered at different Police Stations for different occurrence and has been convicted by different Courts, whereby, he has also been sentenced to life imprisonment shows the gravity of the

offence which was taken note of the Court while awarding life sentence. Clearly the case of the petitioner falls within the definition of Clause (aa) of the Act being a “hardcore prisoner” as Sub-Clause (i) enlist that a person who has been convicted of dacoity under Sections 395, 396 IPC falls under the definition of “hardcore Prisoner” and, therefore, by all means falls under this category. The same has been brought about to ensure that persons found guilty of heinous offences do not easily come out of the jail and in the present case the petitioner has been repeatedly found guilty and convicted for such heinous offence and, therefore, his case is all the more on a higher pedestal of criminality. By virtue of Section 5A of the Act which is by way of special provision for dealing with “hardcore prisoner” is to be read along with provisions of Sections 3 and 4 of the Act. The same have been specifically enacted for the purpose of temporary release or furlough and that a person who is a convicted hardcore prisoner but has not been awarded death penalty shall be entitled for temporary release only if he has completed 5 years of imprisonment excluding “under-trial” period which is not so qua the petitioner and has not been awarded any major punishment by the Superintendent of Jail during his said detention. Thus, by virtue of this an embargo is created on the claim of the petitioner for his release on furlough.

Thus, in the totality of what has been discussed above, the case of the petitioner is hopelessly without any merit and as such stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 19, 2016
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